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IN THE

# Supreme Court of the United States

OCTOBER TERM, A. D. 1964

NO. 334

LOCAL UNION NO. 12405, DISTRICT 50, UNITED MINE WORKERS; JOSEPH J. PIUNTI; ROSS PAVONE; MELVIN WOODRUFF; WAYNE HICKMAN; PASQUALE DE FIORE; DONALD BAKER; HENRY STRACZEK; CARL BAUR; JOHN BRANDT; ODIS PARTIN; NORBERT KOELLING; WALKER WIRTH; WALTER NIEDERT; JIMMY NIEDERT; WILLARD JONES; LEO DOUD, SR.; JOHN MARTISEK; GERALD HAYES; JEFF YOUNG; JERRY MIDDLETON; THEODORE SCHROEDER; MARTIN WOZNY; LOUIS PINO; RUDOLPH VANKO; HANS MARQUARDT; JOE GECHUS; HARRY TRAMM; WILLIAM PRALLE; BAZYL KLIMOWICZ; CHARLES WITT; CLEM DENNIS; WILMER KOELLING; GLENN IRWIN; MILLER PRINCE; STANLEY ZAPOTOCZNY; JOE MOBLEY; WALTER NYKIEL; CARL HENSHAW; FRANK DURANCZYK; and EDWARD ROHR,

*Petitioners,*

vs.

MARTIN MARIETTA CORP., a Maryland Corp.; DISTRICT 50, UNITED MINE WORKERS OF AMERICA,

*Respondents.*

## PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

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## PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

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Petitioners pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals

for the Seventh Circuit, entered in the above entitled case on March 3, 1964, and the denial by the said Court on April 3, 1964, of a petition for rehearing.

## CITATIONS TO OPINIONS BELOW

The District Court rendered no formal opinion and its Findings, Conclusions and Judgment are unreported but are printed at pages 248-255 of the Appendix filed with the Court of Appeals, ten copies of which have been submitted. The opinion of the Circuit Court of Appeals, printed in the Appendix hereto, is reported in 328 F. 2d 945.

## JURISDICTION

The judgment of the Circuit Court of Appeals was entered on March 3, 1964. Rehearing was denied on April 3, 1964. This Court on June 25, 1964, granted an extension to file a petition for certiorari until July 31, 1964. The jurisdiction of this Court is invoked under 28 U. S. C. Section 1254 (1).

## QUESTIONS PRESENTED

1. Is not a court required to direct arbitration of a dispute arising from a Company's laying off of all of its employees and transferring its work elsewhere during the term of a collective bargaining agreement, which, in exchange for a no strike pledge, contains a Company covenant not to withhold any work from its employees pending arbitration and to arbitrate any "differences", "dispute", or "trouble of any kind", where the contract contains ex-

tensive seniority provisions and requires that the work be performed only by employees in the bargaining unit?

2. Does an otherwise arbitrable grievance become non-arbitrable because the International Union (District 50, United Mine Workers) of the Local Union refuses to join in the arbitration request of the Local Union, where the Local Union executed the agreement and administered same and where the International, which also signed the agreement, did so only "on behalf of" the Local Union?

3. In a Section 301 (a) action to enforce the arbitration provisions of a contract, what effect must a Court give to a National Labor Relations Board determination that a Local Union, the plaintiff in such action, is a party to the collective bargaining agreement as against the contention of a company and the Local's International Union that the Local Union is not a party to the agreement?

## STATUTE INVOLVED

The statutory provision involved is Section 301 (a) of the Labor-Management Relations Act of 1947, 61 Stat. 156, 29 U. S. C. 185. It provides as follows:

> "Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Act, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties."

## STATEMENT

This matter involves Section 301 (a) of the Labor Management Relations Act of 1947, 61 Stat. 156, 29 U. S. C. 185. Suit was brought by Local Union No. 12405, (affiliated with District 50, United Mine Workers of America) hereinafter referred to as the "Local", seeking to enforce the arbitration provisions of its collective bargaining agreement with the Martin Marietta Corp.,[1] hereinafter referred to as the "Company". During the term of a collective bargaining agreement, the Company laid off and terminated all of its 41 employees and transferred a substantial portion of the work thereto performed by the employees to other plants of the Company. The employees were not permitted to follow their jobs nor were they transferred to the other locations. The Local and the employees contended that this violated the seniority, union security and other provisions of the collective bargaining agreement and that, at a bare minimum, they were entitled to have their difference and grievance resolved through arbitration in accordance with the terms of the collective bargaining agreement. The Company refused arbitration and suit, joined in by all of the employees affected, was brought.

The collective bargaining agreement involved herein was entered into on May 16, 1961, and was signed by the Local, by the Company and by District 50, United Mine Workers but by the latter "on behalf of Local Union #12405 (the Petitioner herein) of the United Mine Workers of Amer-

1. The actual agreement was entered into by American Marietta Company which later merged with the Martin Company to form the Martin Marietta Corporation (App. 10, 54). The latter assumed all contractual obligations of American-Marietta, including the instant collective bargaining agreement (App. 9-10).

ica." (Pls. Exh. A, App. 33, 261).[2] Its opening paragraph recited that the agreement was "by and between the Pressstite Division, American-Marietta Company . . . and District 50, United Mine Workers of America **on behalf of** Local Union No. 12405 (hereinafter referred to as the 'Union')". (App. 14) (Emphasis supplied) The agreement, by its terms, did not terminate until May 15, 1963 (App. 32).

The Local administered the collective bargaining agreement by itself (App. 81, 83). On rare occasions it was assisted by District 50 which acted only in an advisory capacity (App. 83, 84, 119). Contract demands were formulated by the Local, and, although these demands were shown to District 50 before the first negotiating meeting with the Company, it was the Local rather than District 50 which directed the negotiations and bargaining strategy with the Company (App. 111, 112, 115, 119, 120, 159, 161, 164, 165, 166). The final decision with respect to the rejection or acceptance of the Company's contract proposals lay with the membership of the Local (App. 161-162).

The contract requires that work be performed only by employees in the bargaining unit and contains extensive provisions respecting seniority (App. 15, 20-23, 261). Section VIII (App. 23-26) provides for the maintenance of the status quo during the term of the agreement in the event of any differences. Paragraph A (App. 23-24) commences with a no-strike provision and an agreement on the part of the Union that "pending the adjustment of any dispute" (App. 23) there shall be no "stoppage of work";

2. Pursuant to Rule 21 (3) and (4), Petitioners have filed one certified and nine additional copies of the Appendix together with all of the proceedings in the court below. References to the Appendix will be indicated by the letters "App." followed by the page citation to the pertinent matter. References to the Petition for Rehearing below will be indicated by the letters "Pet. for R'hg." followed by the page citation to the pertinent matter.

similarly, the contract provides that the Company shall not "withhold" any work from the employees pending any dispute." (App. 23). The procedure for handling disputes commences with Paragraph B of Section VIII (App. 24-25) and continues through Paragraph D which requires arbitration (App. 25-26). Paragraph B of said Section requires that should any "differences" or "any local trouble of any kind" arise as to the "meaning and application" of the provisions of the agreement, then the difference or trouble shall be resolved through a series of five steps culminating with "final and binding" arbitration (Para. D, App. 25-26).

The Local first learned of the contemplated cessation of operations in mid September, 1962, when the Company told the Local president that it was shutting down (App. 84, 116). It kept, however, from the Local the fact that a substantial portion of the operations was being transferred to the Company's other plants (App. 84, 87, 89-90). In an effort to help its members in the face of the imminent shutdown, the Local arranged a series of meetings with the Company in September and October, 1962, to explore the possibilities of what could be done for the men (App. 84-85, 86, 87, 88, 90). The Company offered no suggestions, made no proposals at the meetings, and nothing was done for the employees (App. 87, 88, 89). District 50, which participated at the last of the meetings through its field representative, took a position identical with the Company's that there was nothing that could be done (App. 89, 117). District 50's position was reiterated shortly thereafter when its Regional Director told the Local that there was nothing he could do because an employer could shut a plant down the day after it signed a collective bargaining agreement if it chose to (App. 92, 118).

By now it was becoming increasingly clear that the Company was not going out of business, but rather was merely transferring most of its operations. Having received no assistance from District 50 or the Company, the Local in November, 1962, consulted an attorney about their problem (App. 93). He immediately prepared a grievance, which the employees signed, complaining about the Company's laying off employees and transferring operations in the middle of the term of the agreement and requesting payment of wages for at least the duration of the agreement and relocation rights for the employees based upon their seniority (Pls., Exh. 2, App. 35-36, 93, 261). In compliance with the collective bargaining agreement, on November 9, 1962, the employees, with representatives of the Grievance Committee, presented the grievance both orally and in writing to their department foremen (App. 174, 191, 198, 209-215, 218, 219, 226-227, 232-235, 244-245). The foremen replied that they themselves could do nothing and would have to consult with "higher ups" (App. 215, 235). The Local, therefore, proceeded to the second step of the grievance procedure and, on the same date, November 9, 1962, a majority of the Grievance Committee presented the grievance to the plant's general superintendent, Mr. Schmidt (App. 214, 215, 220, 235). Mr. Schmidt also said that he could no nothing for the men and would have to consult his superiors (App. 215, 235). Thereupon, the Local requested and Mr. Schmidt agreed to arrange a third step meeting (App. 167, 168, 215, 235). Mr. Schmidt arranged such meeting and subsequently notified the Local that it had been set for November 16, 1962 (App. 215, 221, 235-236, 237). The meeting was held as scheduled and attended by the representatives of the Local, the Company and District 50. At this meeting, District 50 joined the Company in contending that the Company was not violat

ing the contract and the grievance was therefore invalid. District 50 maintained this position also at a fourth meeting held on November 19, 1964, in an attempt by the Local to resolve the grievance.

On November 21, 1962, the members of the Local voted unanimously (App. 98, 204-205) to submit the grievance to arbitration, and that morning the Local officials presented a demand for arbitration upon the Company's plant manager, Mr. Panichi (App. 37-38, 98, 99, 204-205, 217, 218, 237, 261). Mr. Panichi stated that the Company would not arbitrate the grievance (App. 99-100). On November 23, 1962, the Local and the employees affected filed suit seeking to compel the Company to arbitrate the grievance (App. 3, 8).

The Trial Court, on February 13, 1963, at the conclusion of Petitioners' case, on motion of the Company and District 50, entered judgment on all issues for the Respondents (App. 5). Subsequently, as the result of unfair labor practice charges filed by the Local against the Company, the National Labor Relations Board determined that the Local was a party to the collective bargaining agreement (Pet. for R'hg., p. 8). Being apprised of this fact in a motion for a new trial (App. 256-257), the Trial Court, nevertheless, denied the motion (App. 258). In his Findings of Fact and Conclusions of Law the Trial Court held that:

> "The subject matter of the grievance . . . was not covered by any of the terms of the Wage Agreement, and the parties to that agreement did not contract to refer any of the issues contained in the grievance to arbitration." (App. 254).

"The Company did not breach the Wage Agreement by terminating its manufacturing operations on November 30, 1962, or by laying off its employees." (App. 254).

"District 50 (on behalf of the Local and its members) is the sole collective bargaining agent for the production and maintenance employees of the Company . . . ." (App. 253).

## REASONS FOR GRANTING THE WRIT.

1. We in the Seventh Circuit need the assistance of this Court in attempted arbitration cases involving plant removals—terminating of employees. The decision of the Court below is in direct conflict with this Court's decision in *Wiley & Sons, Inc.* v. *Livingston*, 376 U. S. 543. And, it cannot be said that the instant case is an isolated one, for on June 30, 1964, the same Court refused to direct arbitration in the case of *Piano and Musical Instrument Workers, Local 2549* v. *W. W. Kimball Company*, No. 14446, ——— F. 2d ——— 56 LRRM 2644, another plant removal—terminating of employees case. Nor, was the Court below unaware of the *Wiley* decision, either in the instant case or in the *Kimball* one. On April 2, 1964, while the Petition for Rehearing was still pending below in the instant matter, the Court of Appeals was advised of this Court's March 30, 1964 decision in the *Wiley* case. Nevertheless, it denied the Petition. In its opinion in the *Kimball* case, the Seventh Circuit was more than aware of the *Wiley* decision as is demonstrated by its extensive discussion thereof, its comment that Plaintiff devotes eight pages of its Brief to it and its determination that *Wiley* is inapplicable because a "wholesale transfer" of employees to the removed plant in the *Kimball* case "could not have been made without difficulty". In each instance, rather than determine "arbitrability", *i. e.*, whether or not "the demands (for arbitration) are not so plainly unreasonable that the subject matter of the dispute must be regarded as non-arbitrable because it can be seen in advance that no award to the union could receive judicial sanction", the Court usurped the province of the arbitrator and, in effect, held that the Company had not violated the agreement.

The instant case involved a transfer by the Company of a substantial portion of its operations from its Chicago Heights, Illinois, plant, to its plants in St. Louis Missouri

and Jackson, Michigan, in the middle of the term of the collective bargaining agreement. The Court of Appeals affirmed the District Court's refusal to enforce the Local's demand that the Company arbitrate the question of various rights and obligations resulting from the transfer. In the *Wiley* case, a company with a collective bargaining agreement merged with a larger company which had none. This Court held that the new company was required to submit to arbitration the question of various rights and obligations growing out of the merger.[3] Clearly, if a demand for arbitration growing out of the effects of a merger of two separate employers is enforceable, then it would follow with all the more force that where, as here, there is a substantial transference of operations between different plants of the same employer, that the matter is arbitrable. And, certainly it cannot be said that the arbitration provisions of the contract specifically excluded from arbitration a dispute of the nature involved herein when the contract provided that any "differences" or any "local trouble of any kind" as to the "meaning and application" of the agreement would be resolved through a series of steps culminating in "final and binding" arbitration. Nor, is the instant case distinguishable from *Wiley* because here there are two unions involved whereas there, there was only one. Without reaching the question of whether arbitration was properly invoked (and we submit that it was) at best, such question is for an arbitrator to determine. *Wiley* succinctly clarified and announced that once it is determined that "The subject matter of a dispute (is subject) to arbitration, 'procedural' questions which grow out of the dispute and bear on its final disposition should be left to the

3. The instant decision is also to be compared with the recent decision of the Ninth Circuit in *Wackenhut Corporation* v. *International Union, United Plant Guard Workers of America*, F. 2d ; 56 LRRM 2466 (June 10, 1964), which involved the sale and purchase of assets wherein the Court of Appeals, citing the *Wiley* decision, held that the new employer was bound by the arbitration clause in the agreement with the original employer.

arbitrator." "(W)hether grievance procedures or some part of them apply to a particular dispute, whether such procedures have been followed or excused, or whether the unexcused failure to follow them avoids the duty to arbitrate cannot ordinarily be answered without consideration of the merits of the dispute which is presented for arbitration." In *Wilen*, the company contended that the first two steps of the grievance procedure had not been properly invoked or followed. Here, the Company makes the same contention, except that it complains not about the first two steps of the procedure, but about the latter steps. It (along with District 50) contends that the matter was not properly submitted to arbitration because of the refusal of District 50 (for whatever reason) to participate in the submission. As in *Wilen*, the Petitioner here contends that the alleged failure to properly submit a matter to arbitration, even if true, would not be fatal to a demand to have the issue determined in arbitration. Moreover, here, the Local points to the fact that it is a party signatory to the collective bargaining agreement, that it administered the agreement, selected the grievance committee, and was responsible for the negotiations; that it obviously would not have subordinated its sole contractual remedy of arbitration, where the job survival of all of its members was threatened (the Local represented only employees at the Chicago Heights plant), to an obviously hostile International which at best signed the agreement only "on behalf of" the Local. Nor, can an employer be heard to object to the submission to arbitration of a dispute well within the subject matter of the contract and not expressly excluded by the arbitration provisions thereof where he has covenanted to maintain the *status quo* (and not withhold any work from the employees) during the resolution of any differences and agreed that work be performed only by employees in the bargaining unit. Certainly, with such requirements in the contract—and with an exceptionally broad definition of a grievance or dispute—can it be said that the subject matter of the grievance was not within the contemplation of

the parties when they arrived at the agreement or was excluded from same? And what then remains except a contention that procedurally the matter was not properly submitted to arbitration? And this, directs *Wiley*, is for an arbitrator to determine along with the other issues submitted to him.

2. Wholly apart from any other consideration, a serious conflict exists between two forums having concurrent jurisdiction.[4] In processing's the Local's refusal to bargain unfair labor practice charge, the National Labor Relations Board determined that the Local was a party to the collective bargaining agreement. The District Court ignored this finding and specifically held that District 50 was the *sole* collective bargaining agent for the Company's employees. The Court of Appeals affirmed the District Court. We are now confronted with a situation where the Local has been found to be a collective bargaining representative by the exclusive agency authorized by Congress to make such determination, *i. e.*, the National Labor Relations Board, but yet the District Court and the Court of Appeals have frustrated any meaningful fruition of such representation by holding that this representative (the Local) cannot enforce the arbitration provisions of its agreement. And, the result here prevents accomplishment of what the National Labor Relations Board has determined the Local do, *i. e.*, administer its collective bargaining agreement. The basic policy underlying the National Labor Relations Act has been equally thwarted for the Congressional purpose was to avoid industrial strife by setting up machinery for representatives of employees to negotiate, administer and enforce collec-

4. *Teamsters* v. *Lucas Flour Co.*, 369 U. S. 95; *Dowd Box Co.* v. *Courtney*, 368 U. S. 502; *Atkinson* v. *Sinclair Refining Co.*, 370 U. S. 238; *Smith* v. *Evening News Ass'n.*, 371 U. S. 195.

tive bargaining agreements. If this is so, where then does the result below leave us? The Local is the collective bargaining representative. But when it comes to enforce the arbitration provisions of the agreement coming about by reason of its representation, it is no longer the collective bargaining representative. And, where does such a dichotomy fit into the overall complex of the requirement that federal law must be fashioned from the policy of our national labor laws (*Textile Workers Union* v. *Lincoln Mills*, 353 U. S. 448)—the National Labor Relations Act obviously being such a national law? It clearly serves no useful purpose to find that the Local is a collective bargaining representative for the purpose of negotiating a contract, but not a representative for the purpose of enforcing the contract it negotiated. Moreover, the remedy available to the employees represented by the Local via the National Labor Relations Board, in the instant case is no substitute for the remedy available through the contract, for if bargaining could have enforced the rights guaranteed in the contract[5], this matter would not now be in the courts.

We urge that it is essential that this Court answer the question of the effect a court must give to the National Labor Relations Board's determination here that the Local is a party to the collective bargaining agreement. The answer to the question, we submit, may well highlight, as we suggest, that the Board's determination is merely another indicia of the fact that the Court of Appeals was in error: that District 50 whose only act was to sign the contract "on behalf of" the Local Union, cannot align itself with a recalcitrant employer to thwart arbitration. The es-

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5. Moreover, no offer whatsoever has been forthcoming from the Company as regards making some provision for these employees, and it will soon be two years since the employees were terminated and the work transferred.

sential point may be—and we suggest it is the only approach compatible with existing decisions of this Court—that to the extent the subject matter is clearly covered by the agreement and not excluded by the arbitration provision thereof, the contention of the Company here that it is not required to arbitrate, can only be resolved when an arbitrator considers whether or not, based upon the total complex, District 50's cooperation was necessary to process a grievance beyond the initial steps. And, this places the matter squarely within the *Wiley* decision as to whether or not the procedure was appropriately followed. In the final analysis the wisdom of *Wiley* permeates this entire case. From a standpoint of overall national policy, arbitration and its ameliorating effect represent our country's answer to industrial strife. And, as regards the individual employee caught up in the turbulence of the upheaval the instant situation creates for him, arbitration, as requested by his Local Union, represents the only possible effective remedy.

## CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

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Chicago, Illinois,
July 28, 1964.

# APPENDIX

IN THE

# United States Court of Appeals

FOR THE SEVENTH CIRCUIT

No. 14200 · SEPTEMBER TERM, 1963—JANUARY SESSION, 1964

LOCAL UNION NO. 12405, DISTRICT 50, UNITED MINE WORKERS; JOSEPH J. PIUNTI; ROSS PAVONE; MELVIN WOODRUFF; WAYNE HICKMAN; PASQUALE DE FIORE; DONALD BAKER; HENRY STRACZEK; CARL BAUR; LOWELL WHITE; JOHN BRANDT; ODIS PARTIN; NORBERT KOELLING; WALKER WIRTH; WALTER NIEDERT; JIMMY NIEDERT; WILLARD JONES; LEO DOUD, SR.; JOHN MARTISEK; GERALD HAYES; JEFF YOUNG; JERRY MIDDLETON; THEODORE SCHROEDER; MARTIN WOZNY; LOUIS PINO; RUDOLPH VANKO; HANS MARQUARDT; JOE GECHUS; HARRY TRAMM; WILLIAM PRALLE; BAZYL KLIMOWICZ; CHARLES WITT; CLEM DENNIS; WILMER KOELLING; GLENN IRWIN; MILLER PRINCE; STANLEY ZAPOTOCZNY; JOE MOBLEY; WALTER NYKIEL; CARL HENSHAW; FRANK DURANCZYK; and EDWARD ROHR,

Plaintiffs-Appellants,

vs.

MARTIN MARIETTA CORP., a Maryland Corp., District 50, UNITED MINE WORKERS OF AMERICA,

Defendants-Appellees

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

March 3, 1964

Before HASTINGS, *Chief Judge*, and KNOCH and CASTLE, *Circuit Judges*.

KNOCH, *Circuit Judge*. Plaintiff, Local Union No. 12405, District 50, United Mine Workers, hereinafter called the "Local," brought suit in the United States District Court, pursuant to § 301(a) of the Labor Management Relations Act of 1947, 29 U.S.C. 185, to enforce the arbitration provisions of a collective bargaining agreement made with defendant, Martin Marietta Corp., hereinafter called "Martin." The Local also sought damages for alleged breach of contract, and a temporary restraining order enjoining Martin from closing down its Chicago Heights, Illinois, plant and laying off its employees there, pending arbitration. The individual plaintiffs are employees of Martin at the Chicago Heights plant who filed a grievance, described below, which, inter alia, questioned Martin's right to terminate operations at its Chicago Heights plant and to lay off its employees there.

Another aspect of the case, distribution of certain pension funds, was involved in the District Court proceedings, but has been specifically excluded from the notice of appeal.

District 50, United Mine Workers of America, hereinafter called "District 50," the International with which the Local was affiliated, intervened as a defendant in the District Court. On motion of Martin and District 50, at the close of plaintiffs' evidence in the District Court, judgment was entered for the defendants. This appeal followed.

Martin's predecessor had a history of collective bargaining going back through 1941. The current agreement was entered into May 16, 1961, and was signed by the Pressitte Division, American-Marietta Company, (which later merged with the Martin Company to form the Martin Marietta Corp., which assumed all contractual obligations) through its plant manager; by District 50 "on behalf of Local Union #12405, of the United Mine Workers of Amer-

ica" through its regional director and its field representative; and, was also signed, although they were not specifically named as parties to the contract, by the Local through its president, a plaintiff in this action; by the "negotiating committee" all of whom are also plaintiffs here; and "approved" by the president of District 50.

In September 1962, Martin wrote the Regional Director of District 50, with a copy sent to the President of the Local, all of whose members were employees at the Chicago Heights plant, that Martin would cease operations there, and hoped to close the plant by November 30, 1962.

The President and Vice President of the Local met with Martin's plant manager, as did the Local's grievance committee. A third meeting with a field representative of District 50 occurred in September or October, 1962. There was an expression of great concern respecting the disposition of the pension and other funds. Nothing apparently was said about any transfer of operations. In October 1962, District 50's regional director, Mr. Bowers, promised to check on the funds and also told the Local's representatives that Martin had a right to shut down its plant if it wished to do so. However, without advising District 50, the Local engaged counsel and presented a grievance dated November 15, 1962. District 50 learned of this grievance the following day at a meeting of representatives from Martin, the Local, and District 50, including the members of the grievance committee and attorneys for Martin.

The grievance made no mention of any transfer of operations, merely questioning Martin's right to terminate operations and employment; in the alternative, requesting salaries for the duration of the current bargaining agreement, relocation at other Martin plants and relocation expenses; and distribution of the pension monies. A copy of the

grievance was sent to District 50 with a letter dated November 15, 1962, which stated that the first three steps of the grievance procedure set out in the collective bargaining agreement had been taken. It has since been argued that the November 16, 1962, meeting was the third step. District 50's president replied to this letter that the first two points of the grievance were subject to the bargaining agreement between District 50 and Martin and that plaintiffs' attorney could not bargain with Martin on these issues because he did not represent District 50; nor could he bargain as to the third point because he did not represent any party to the Pension Agreement.

At the meeting on November 16, 1962, District 50 and Martin both characterized the grievance as invalid. Most of the meeting was devoted to discussion of the pension fund which the Local wished to have split equally among all the employees. Martin asserted that there was no provision in the bargaining agreement for severance pay and that transfers of employees with preservation of seniority was not feasible in this instance because the other plants were all in operation, staffed and organized with their own unions.

Plaintiffs' attorney was excluded from the meeting on November 16 and from the following meeting on November 19, 1962. At a membership meeting on November 21, 1962, the Local decided to demand arbitration. A copy of their "demand" was presented to Martin's plant manager, who refused to recognize it as such, and on November 23, 1962, plaintiffs filed their aforesaid complaint in the U. S. District Court against Martin, seeking arbitration and damages for breach of contract, including as such breach the refusal to distribute the pension fund.

When District 50 was allowed to intervene as a defendant, it set out in its answer and in its cross-claim for declaratory judgment, that it was the sole bargaining representative for members of the Local under the agreement with Martin, that it was still engaged in negotiation of the first two points of the grievance, no impasse having been reached, and that nine pensioners with vested interests in the pension fund were indispensable parties to any disposition of the pension fund.

Although nothing was apparently said to District 50 about transfer of operations, plaintiffs asserted in the complaint and in their brief on appeal that Martin was not going out of business in Chicago Heights but was merely transferring most of its operations from Chicago Heights to other plants. Plaintiffs' counsel agreed in the District Court that Martin did have a right to go out of business or discontinue "the work which had been done in the Chicago Heights operation" (as District 50 representatives had advised the Local) and that he would not object to that. The District Court did not find however that there was any transfer of operations from the Chicago Heights plant to other plants. There was evidence to support the District Court's finding that:

> 22. In November and December, 1962, and thereafter, the Company disposed of the operating equipment of its Chicago Heights, Illinois, plant by selling some items to outside persons, by transferring some items to its Jackson and St. Louis plants, and by scrapping the rest.

The pension fund question, as indicated above, has been disposed of in the District Court. A number of other issues have been presented which we will not reach. We find the District Court's decision that District 50 was the sole collective bargaining agent with the exclusive power to re-

fer a grievance to arbitration (with which conclusion we agree) dispositive of this appeal.

Under the collective bargaining agreement with Martin, only the "Union" may refer grievances to arbitration. The agreement sets out the parties thereto as:

> PRESSTITE Division, AMERICAN-MARIETTA COMPANY, whose plant is located at Chicago Heights, Cook County, Illinois (hereinafter referred to as the "Company") and DISTRICT 50, UNITED MINE WORKERS OF AMERICA, on behalf of Local Union No. 12405 (hereinafter referred to as the "Union")

There are a number of provisions throughout the agreement, which, in our opinion, show that District 50 is the "Union," e. g. "Union Dues" are to be sent to District 50 in Washington, D. C., which is to furnish written assignments; the fourth step of the grievance procedure outlined in the agreement refers to the field representative and the regional director of the "Union," and the Local has no such officers. The wording of the pension fund which is entitled:

> The District 50, United Mine Workers of America and Keystone Asphalt Products Company, a Division of the American-Marietta Company Pension Agreement

also bolsters the conclusion that the "Union" is District 50 and not the Local. The latter is designated as "Local Union," for example, in the reference to a joint committee selected by the Union and the Company to administer the pension fund, two to be appointed by the Company and two "by the Administrative Officer of District 50 • • • one of whom shall be a member of the said Local Union • • •"

Plaintiffs contend that District 50 has merely made this contract "on behalf of" the Local and that it is the Local which is "hereinafter referred to as the 'Union'": that District 50 is at most an agent for the Local as the principal whose will must prevail in the event of conflict between the agent and its principal. Analogous arguments have been advanced for individual members of a union as the principals for whom the union acts as agent in making a contract with a company. We cannot agree. We find persuasive the reasoning in *Remak* v. *Electric Auto Lite Co.*, 44 LC 25,779, Pa. Ct. of Com. Pleas, 1961, where the Court said:

> The collective bargaining agreement is a two-edged sword. On the one hand, it obliges the employer to negotiate with the union as the sole bargaining agent of the employees. On the other hand, it generally bars the employees from harassing employers with the grievance procedures, arbitration, and resort to the courts unless the *bargaining agent*, not the employee acting independently, avails itself of the procedures prescribed in the collective bargaining agreement. [The Court's own emphasis.]

and in *Ostrofsky* v. *United Steel Workers of America*, D., Md., 1959, 171 F. Supp. 782, 790, where the Court noted that:

> A union's right to screen grievances and to press only those it concludes should be pressed is a valuable right, and on balance it benefits all employees. Professor Cox has pointed out [Rights Under a Labor Agreement, 69 Harv. L. Rev. 601] that there are "strong reasons for concluding that the bargaining representative ought to have power under a broad industrial agreement to control the prosecution of claims for breach of contract, whether by pressing grievances, invoking arbitration, or instituting legal proceedings." 69 Harv. L. Rev. at 625.

which is cited with approval in *Black-Clawson Co., Inc.* v. *International Ass'n of Mach.*, 2 Cir., 1962, 313 F. 2d 179, 186.

Plaintiffs invite our attention to *Electrical Workers* v. *Oliver Corporation*, 8 Cir., 1953, 205 F. 2d 376, where the introductory paragraph of the agreement recited that it was executed by and between the Company and the International Union "on behalf of and in conjunction with" the Local Union "hereinafter referred to as the Union." The Court there held that the word "Union" subsequently appearing in a no-strike clause meant the Local Union. The quoted words show that the contract in *Oliver* was made by the International *and* the Local Union. The Court construed the contract as imposing several and not joint obligations on the defendant International and Local Unions and held that:

> [T]he failure of the Local Union before a strike or cessation of work to post the required notice on the plant bulletin boards and take the required strike vote was a material violation of the agreement; that the International Union, as a party to the agreement in conjunction with and on behalf of the Local Union was at least bound not to cause, induce, or promote a breach of the Local Union's obligations under the agreement.

Thus, in *Oliver*, the word "union" could refer to the International and the Local Union as indicated by the context.

We see no inconsistency in designating as "Union" committee the grievance committee and the negotiating committee regardless of whether or not they are selected by the Local, as all members of the Local are also members of District 50.

Under the procedures set out in the collective bargaining agreement, the first and second steps of the grievance

procedure do not require District 50 participation. A representative of District 50 must join in the third step. At the fourth step:

> The grievance will then be referred for the consideration of the local grievance committee, the Field Representative and the Regional Director for the Union and the President of the Company or any of his representatives. * * * If a grievance is not satisfactorily adjusted * * * in step four (4) above, then it may be referred by the Union, * * * to arbitration.

District 50 was indispensable to step four which could not be bypassed by plaintiffs' own attempt to demand arbitration.

Adoption of plaintiffs' theory would leave Martin in an untenable position, having to choose at its peril whether to continue or to abandon pending negotiations with one representative of its employees to take up inconsistent demands with another. That is not the way to industrial peace.

We have weighed all other arguments urged on us by the plaintiffs and have studied all the references they have cited. We find no justification for reversing the decision of the District Court. The judgment is affirmed.

AFFIRMED.

A true Copy:

Teste:

.....

*Clerk of the United States Court of Appeals for the Seventh Circuit.*

Supreme Court, U.S.
FILED
SEP 19 1964
JOHN F. DAVIS, CLERK

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1964.

**No. 334**

LOCAL UNION NO. 1206, DISTRICT 50, UNITED MINE WORKERS; JOSEPH J. PIUNTI; ET AL.,

*Petitioners,*

*vs.*

MARTIN MARIETTA CORPORATION; DISTRICT 50, UNITED MINE WORKERS OF AMERICA,

*Respondents.*

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

## BRIEF FOR RESPONDENT, MARTIN MARIETTA CORPORATION, IN OPPOSITION

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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1964.

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**No. 334.**

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LOCAL UNION NO. 12405, DISTRICT 50, UNITED MINE WORKERS; JOSEPH J. PIUNTI; ET AL.,
*Petitioners,*

*vs.*

MARTIN MARIETTA CORPORATION; DISTRICT 50, UNITED MINE WORKERS OF AMERICA,
*Respondents.*

---

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

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## BRIEF FOR RESPONDENT, MARTIN MARIETTA CORPORATION, IN OPPOSITION.

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### QUESTIONS PRESENTED.

1. In a Section 301(a) action,[1] is a district court required to direct arbitration upon demand of a Local Union and individual employees, against the opposition of the governing International Union, when the contract provides that the International Union is indispensable for referral to arbitration?

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1. Suits in district courts of the United States for violation of certain union contracts are authorized by Section 301(a) of the Labor Management Relations Act of 1947, 61 Stat. 156, 29 U. S. C. § 185(a).

2. Is a court required to direct arbitration which would affect the interests of strangers to the contract, of two different unions at distant plants (in Michigan and Missouri, whereas the dismantled plant site is in Illinois) and of a new purchaser-employer of the other plants, when these strangers and the employees at the other plants (subject to possible job loss under an award) would not be parties to the arbitration?

3. Is a court required to direct arbitration of asserted demands for inter-plant seniority and guaranteed pay of laid-off employees, where such unprecedented demands are clearly not supported by any contract provision, upon permanent closing and dismantlement of the plant, solely on the basis that a part of the equipment of the old plant was shipped to the other, established plants?

4. When the General Counsel of the National Labor Relations Board declined to issue a complaint upon charges that an employer had refused to meet with one of several union representatives, his action being primarily based upon the persuasive effect of the Court of Appeals decision below, may such action be fairly viewed as a "determination" by the Labor Board contrary to the court decision?

## STATEMENT.

The courts below both found that District 50 was indispensable to a referral to arbitration. The District Court found:

> "14. Under the terms of the Wage Agreement, District 50 is an indispensable party at steps three and four of the grievance procedure and in any arbitration. . . .
>
> "16. At step three of the grievance procedure established in the Wage Agreement, District 50 contended that the grievance of the Local 'was invalid' and District 50 'did not recognize it as such'.

"17. On or about November 21, 1962, the Local served a demand for arbitration on the Company. This demand was not joined in by District 50.

"18. The demand by the Local for arbitration, and the grievance procedures antecedent to it, were not in conformity with the provisions of the Wage Agreement." (App. 251-2.)[2]

The Court of Appeals found as follows:

"Under the collective bargaining agreement with Martin, only the 'Union' may refer grievances to arbitration. The agreement sets out the parties thereto as:

> "PRESSITE DIVISION, AMERICAN-MARIETTA COMPANY, whose plant is located at Chicago Heights, Cook County, Illinois (hereinafter referred to as the 'Company') and DISTRICT 50, UNITED MINE WORKERS OF AMERICA, on behalf of Local Union No. 12405 (hereinafter referred to as the 'Union').

"There are a number of provisions throughout the agreement, which, in our opinion, show that District 50 is the 'Union,' e.g. 'Union Dues' are to be sent to District 50 in Washington, D.C., which is to furnish written assignments; the fourth step of the grievance procedure outlined in the agreement refers to the field representative and the regional director of the 'Union,' and the Local has no such officers. The wording of the pension fund which is entitled:

> "The District 50, United Mine Workers of America and Keystone Asphalt Products Company, a Division of the American-Marietta Company Pension Agreement.

also bolsters the conclusion that the 'Union' is District 50 and not the Local." The latter is designated as

---

2. Petitioner has filed ten copies of its Appendix below, and of Petitioner's "Petition for Rehearing" below. The Company has filed ten copies of its "Brief" and its "Answer" below to the Petition for Rehearing. References to these respective documents appear herein as "App.", "Pet. for Rehg.", "Co. Brief", and "Co. Answer." References to the Petition for a Writ of Certiorari appear as "Pet."

'Local Union,' for example, in the reference to a joint committee selected by the Union and the Company to administer the pension fund, two to be appointed by the Company and two 'by the Administrative Officer of District 50 * * * one of whom shall be a member of the said Local Union * * * '' .

* * * * *

"Under the procedures set out in the collective bargaining agreement, the first and second steps of the grievance procedure do not require District 50 participation. A representative of District 50 must join in the third step. At the fourth step:

> "The grievance will then be referred for the consideration of the local grievance committee, the Field Representative and the Regional Director for the Union and the President of the Company or any of his representatives. * * * If a grievance is not satisfactorily adjusted * * * in step four (4) above, then it may be referred by the Union, * * * to arbitration.

"District 50 was indispensable to step four which could not be bypassed by plaintiffs' own attempt to demand arbitration." (Pet. 6a, 8a-9a.)

There was no transfer of operations from Chicago Heights to other plants. The court below found as follows:

"Although nothing was apparently said to District 50 about transfer of operations, plaintiffs asserted in the complaint and in their brief on appeal that Martin was not going out of business in Chicago Heights but was merely transferring most of its operations from Chicago Heights to other plants. Plaintiffs' counsel agreed in the District Court that Martin did have a right to go out of business or discontinue 'the work which had been done in the Chicago Heights operation' (as District 50 representatives had advised the Local) and that he would not object to that. *The District Court did not find however that there was any transfer of operations from the Chicago Heights plant to other plants.* There was evidence to support the District Court's finding that:

> "22. In November and December, 1962, and thereafter, the Company disposed of the operating equipment of its Chicago Heights, Illinois, plant by selling some items to outside persons, by transferring some items to its Jackson and St. Louis plants, and by scrapping the rest." (Pet. 5a, italics added.)

The contract provides for lay-offs without stipulation for pay (App. 21) and for management rights to "direct and control plant operations . . ., relieve employees from duty because of lack of work or for other legitimate reasons. . . ." (App. 16.) No provision is made for permanent shutdown, and no guaranty of work is expressed except that foremen shall not perform physical work (App. 15). "Plant seniority" is established without any provision for inter-plant seniority rights (App. 20-21).

Other unions with contracts represented Company employees at the Jackson, Michigan, and St. Louis, Missouri, plants (App. 177, 252; Pet. 4a). As of July 1, 1963, these plants were sold to Interchemical Corporation which has owned and operated them since that time (Co. brief, p. 6). The Local has not joined these other unions or Interchemical as parties to this litigation.

The Local filed charges of unfair labor practice with the National Labor Relations Board against the Company; the Regional Director's reason for refusing to issue complaint was stated as follows:

> "Investigation of this matter reveals that the Company has unconditionally offered to meet and bargain, upon request, with representatives of District 50, United Mine Workers of America and its Local Union No. 12405, whoever they may be. In view of this Commitment, it would not effectuate the purposes of the Act to issue complaint in this matter. Therefore, I am refusing to issue complaint at this time." (Pet. for Rehg. p. 8.)

After the Local appealed from the Regional Director's ruling to the General Counsel of the Board, the latter sustained it as follows:

> "This Office sustains the ruling of the Regional Director. It was concluded, apart from other considerations, that the Seventh Circuit Court of Appeals decision in *Local Union No. 12405 et al. v. Martin Marietta Corporation and District 50, United Mine Workers of America*, 55 LRRM 2592, that District 50 was the sole collective-bargaining agent empowered to refer a grievance to arbitration, rendered further proceedings herein unwarranted." (Co. Answer, pp. 5-6.)

There was no other "determination" of the Board relating to this matter. No complaint was issued, and no proceedings had before a Trial Examiner or the Board. No finding was made by the Board, or by any Board agent, that the Local was a party to the 1961 contract, or that it could compel arbitration in opposition to District 50. The General Counsel concurred with the court below that it could not.

## REASONS FOR DENYING THE WRIT.

1. Petitioners' assertions about a plant removal and a transfer of operations are contrary to the evidence and findings of both courts below. Their view of contract construction, of the Local's power under the contract to compel arbitration in the face of opposition from District 50, is contrary to that of both courts below and of the General Counsel of the National Labor Relations Board.[3] This Court normally will not grant certiorari to review issues of fact and contract construction.[4]

2. Their contention that the decision below is in direct

3. A union should be free to sift out frivolous grievances—*Humphrey* v. *Moore*, 375 U. S. 335, 84 S. Ct. 363, 372; and see *Ford Motor Company* v. *Huffman*, 345 U. S. 330, 338.

4. *Graver Mfg. Co.* v. *Linde Co.*, 336 U. S. 271, 275.

conflict with the *Wiley* decision[5] of this Court is untenable, since *Wiley* involved a merger wherein all predecessor obligations were assumed by the surviving entity.[6] This case involves the unique situation of a dissident Local's attempt to obliterate the powers and contract rights of its own international union, and to ignore the existence and rights of two other unions and the employees at the Jackson and St. Louis plants of the Company. Under these circumstances, the permanent shut-down and dismantlement of the Chicago Heights plant present facts of an entirely different order than those involved in *Wiley*.

3. Petitioners invoke the *Kimball* decision of the Seventh Circuit as a part of their effort to show disregard of *Wiley*; however, the *Kimball* situation involved a plant removal under still different circumstances, and the court expressly distinguished the *Wiley* holding in its decision.[7] The instant petition has no relation to further litigation of the *Kimball* case.

4. Petitioners argue that the indispensability of District 50 to any referral to arbitration is a "procedural" matter which is necessarily an issue solely for an arbitrator, as if the semantics of classification were more important than jurisdictional substance. The substantial bargain of the parties here required that District 50 control the referral to (and presumably the conduct of) arbitration. No arbitration was contemplated without District 50. None was possible when opposed by District 50. So basic an issue was clearly a question for the court. This Court said in *Atkinson*:

"Under our decisions, whether or not the company was

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5. *Wiley & Sons, Inc. v. Livingston*, 376 U. S. 543.

6. *Corpus Juris Secundum*, Vol. 20, § 1897; *Helvering v. Metropolitan Edison Co. and Pennsylvania Water & Power Co.*, 306 U. S. 522, 529.

7. *Piano and Musical Instrument Workers, Local 2549 v. W. W. Kimball Company*, 7 Cir., 333 F. 2d 761.

bound to arbitrate, as well as what issues it must arbitrate, is a matter to be determined by the Court on the basis of the contract entered into by the parties.'"[8]

5. Petitioners have made no effort to join the other two unions or the current owner of the business in this litigation which is thus limited for purposes of available remedy, in view of the absence of parties indispensable for any other remedy, to a damage action against the Company. In Count II of their complaint, the petitioners alleged a damage action (App. 12-13); however, their Petition to this Court presents three arbitration questions and no damage question (Pet. 2-3). Accordingly, the Petition does not present a proper question for the consideration of this Court.

6. Petitioners' arguments about a conflict between the court below and the National Labor Relations Board proceed from a distortion of facts. There is no conflict. Both tribunals concurred that District 50 is indispensable to arbitration.

## CONCLUSION.

For the reasons stated, this petition for a writ of certiorari should be denied.

Respectfully submitted,

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September 19, 1964.

8. *Atkinson* v. *Sinclair Refining Company*, 370 U. S. 238, 241.

Office-Supreme Court, U.S.
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IN THE

# Supreme Court of the United States

OCTOBER TERM, A. D. 1964.

**No. 334**

LOCAL UNION NO. 12405, DISTRICT 50, UNITED MINE WORKERS OF AMERICA; JOSEPH J. PIUNTI; ET AL.,

*Petitioners,*

*vs.*

MARTIN MARIETTA CORP., A MARYLAND CORP.; DISTRICT 50, UNITED MINE WORKERS OF AMERICA; ET AL.,

*Respondents.*

## BRIEF OF DISTRICT 50, UNITED MINE WORKERS OF AMERICA, IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

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THE GUNTHORP-WARREN PRINTING COMPANY, CHICAGO

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IN THE

# Supreme Court of the United States

OCTOBER TERM, A. D. 1964.

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**No. 334.**

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LOCAL UNION NO. 12405, DISTRICT 50, UNITED MINE WORKERS OF AMERICA; JOSEPH J. PIANTI; ET AL.,

*Petitioners,*

*vs.*

MARTIN MARIETTA CORP., A MARYLAND CORP.; DISTRICT 50, UNITED MINE WORKERS OF AMERICA; ET AL.,

*Respondents.*

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## BRIEF OF DISTRICT 50, UNITED MINE WORKERS OF AMERICA, IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

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### QUESTIONS PRESENTED.

Petitioners' statement of "questions presented" (pp. 2-4) thoroughly misapprehends what questions are properly before this Court.

The first of petitioners' stated "questions" is an irrelevant inquiry into the duty of a court to compel arbitration under an assumed set of facts, but omitting from that set of facts the controlling fact present in this case—that the grievance was never referred to arbitration by the petitioners' collective bargaining agent, the only party empowered by the collective agreement to refer a grievance to arbitration.

The second of petitioners' stated "questions" confuses the question of what types of disputes are arbitrable (which was not decided by the Court of Appeals) with the question of who under the contract had the right to demand arbitration. The question posed by petitioners ("Does an otherwise arbitrable grievance become non-arbitrable * * *") may well mislead this Court as to what was decided below.

The third of petitioners' stated "questions" is highly improper in that it contains the statement that the N.L.R.B. made a determination that the Local Union was a party to the collective bargaining agreement, which statement is not only unsupported by the record but is contradicted by the record (Pet. for Rehearing, p. 8).

The court below held: (1) that District 50, United Mine Workers of America (hereinafter called "District 50"), was the "Union" party to the collective bargaining agreement and the party in which the agreement lodged the right to refer a dispute to arbitration, and (2) that District 50 could not be by passed in a referral of the grievance to arbitration. The only questions properly before this Court on the instant petition for writ are whether those determinations by the District Court and the Court of Appeals are supported by the record. No other question of law is presented.

## STATEMENT OF THE CASE.

Petitioners' "statement" (pp. 4-9) needs to be corrected. It ignores or confuses the facts which are clearly stated in the opinion of the Court of Appeals, and it takes unwarranted liberties with the record. Among other errors in petitioners' "statement" are the following errors:

1. Petitioners state (p. 4) that "the Company * * * transferred a substantial portion of the work thereto [sic] performed by the employees to other plants of the Company"; (p. 6) that "a substantial portion of the operations

was being transferred to the Company's other plants (App. 84, 87, 89-90)"; and (p. 7) that "the Company • • • was merely transferring most of its operations." These assertions by the petitioners are not supported by the record. The pages of the Appendix (84, 87, 89-90) cited by petitioners in support of their statements merely disclose questions by petitioners' counsel in examining a witness as to whether the Company told the witness that it was transferring its operations elsewhere and the *negative* responses by the witness to all such questions.

2. Petitioners state (p. 5) that the local union "administered the collective bargaining agreement by itself" (citing App. 81, 83), but the Appendix pages cited show merely that at the early stages of the grievance procedure the local union itself handled grievances in accordance with the contract—a contract which also requires, however, that after the initial steps have been taken by the local union, then District 50 must be brought in and that only the latter may refer a grievance to arbitration. In stressing the number of functions performed by the local union, petitioners not only ignore those performed by District 50 as such but also fail to recognize that the negotiating committee of the local union is also the negotiating committee of District 50 (the International Union), a fact which is emphasized by the signature page of the Pension Agreement (Add. App. 11) where the negotiating committee signed as representatives of District 50 and not of the local union as such. As the opinion of the Court of Appeals properly recognizes, there is no inconsistency between the fact that members of the local union signed the contract and a holding that District 50 is the "Union" party to the contract. All members of the local union were of necessity also members of District 50.

3. Petitioners misrepresent the record in stating (p. 7) that the "grievance" complained "about the Company's • • • transferring operations." As stated in the opinion

of the Court of Appeals (with complete support from the record), "[t]he grievance made no mention of any transfer of operations * * *" (Appendix to Pet. for Rehearing, p. 3a).

4. Petitioners misrepresent the record in stating (p. 8) "the National Labor Relations Board determined that the Local was a party to the collective bargaining agreement (Pet. for R'hg., p. 8)." This reference to the record "(Pet. for R'hg., p. 8)" shows that the only determination of the Board was the Regional Director's refusal to issue a complaint charging the Company with an unfair labor practice (a ruling which we understand was sustained by the General Counsel of the Board, as shown in an appendix to the answer to petition for rehearing which was filed by the Company in the Court of Appeals but omitted by petitioners from the record filed in this Court although they included their petition for rehearing in the record filed herein).

The statement of facts contained in the opinion of the Court of Appeals fairly states the case, and we will not burden this brief by repeating or elaborating on that statement in this division of our brief.

## REASONS FOR DENYING WRIT.

The Court of Appeals properly affirmed the District Court's refusal to compel arbitration of petitioners' three-part grievance on the ground that District 50, the "Union" party to the collective bargaining agreement and as such the only party entitled to demand arbitration, had not referred the grievance to arbitration.

The first two grounds of the grievance were predicated on the cessation of operations by the Company (which petitioners' counsel later conceded was within the Company's prerogatives) and the third ground sought a prorata dis-

tribution of the pension fund (to which petitioners later conceded they were not entitled, in specifically excluding that issue from their appeal to the Court of Appeals). District 50 did not agree with the local union members that the existing pensioners could be deprived of their vested rights in the pension fund, and it was engaged in collective bargaining with the Company on alleviating the economic impact of the plant shut-down on the local union members when the petitioners demanded, and filed, suit to compel, arbitration of their three-part grievance. Petitioners' demand for arbitration was not served on District 50, nor was District 50 named in their suit, in which District 50 was, therefore, compelled to intervene.

## I.

Petitioners have asserted, first, that the decision of the courts below conflicts with the holding of this Court in *Wiley & Sons, Inc.* v. *Livingston*, 376 U. S. 543, that under the facts there presented the arbitrator, not the court, was the appropriate body to decide whether precedural prerequisites conditioning, under the agreement, the duty to arbitrate, had been met. The *Wiley* case, however, involved an effort by the "Union" party to the contract (the sole bargaining agent) to compel arbitration, whereas the case at bar involves an effort by other parties to by-pass the "Union" party to the contract (the sole bargaining agent) in seeking to compel arbitration, contrary to the express provision of the collective bargaining agreement as to who may refer a dispute to arbitration. The two cases are clearly distinguishable.

Petitioners apparently feel that the *Wiley* decision required the District Court in the case at bar to submit to an arbitrator (in whose selection District 50 presumably would be conceded no part), for final and binding decision,

not a mere procedural question whether there was compliance with the initial steps of the grievance procedure prerequisite to arbitration, but the substantive question (decided by the courts below in favor of District 50) whether the local union or District 50 is the collective bargaining agent entitled to seek arbitration under the contract. No such result can be said to be required herein by the decision of this Court in the *Wiley* case, which reiterates the rule that "the courts have the task of determining 'substantive arbitrability'" (376 U. S., at p. 558).

Few court cases involve rival employee factions each claiming exclusive power to administer the grievance procedure under a particular contract. There is, however, one reported case which not only involved those facts but also decided the question whether it was for the court or for the arbitrator to decide which of the two employee factions had the legitimate claim. In *Application of American Machine & Foundry Co.*, 193 Misc. 990, 85 N. Y. S. 2d 456 (1948), there had been two rival employee grievance committees, each claiming to be the properly constituted grievance committee in which the collective bargaining agreement vested the power to refer a grievance to arbitration. One committee attempted to refer a grievance to the arbitrator named in the labor contract, whereupon the other committee joined the employer in seeking a court order staying the arbitration. Justice Charles W. Froessel (later of the N. Y. Court of Appeals) held that the jurisdiction of the arbitrator depended upon whether the committee which referred the matter to him had the proper authority to act under the labor agreement and that the question whether the proper committee had called for arbitration was for the court to decide, not the arbitrator. Whether there could be any arbitration at all depended upon a determination whether the proper party had requested it, a fundamental question, to be decided by the court.

In this New York case, the labor contract designated the arbitrator by name, so there was someone in existence, duly designated, to whom the court could have left the determination whether the proper grievance committee had demanded arbitration. In the case at bar, no arbitrators are named in the collective bargaining agreement, so the identity of the arbitrators cannot be determined unless and until the "Union" (District 50) demands arbitration. The holding of Justice Froessel that this was a question for the court, notwithstanding the fact that the arbitrator was named in the contract, and notwithstanding New York State's well-known history of leaving questions of procedural arbitrability to the arbitrator, gives the *American Machine & Foundry Co.* case added emphasis.

Petitioners cite no case holding that arbitration may be compelled at the behest of any party or parties other than those on whom the collective bargaining agreement bestows the right to refer a dispute to arbitration, and there are numerous cases to the opposite effect. The latter cases are in no wise inconsistent with the *Wiley* case, and there is nothing in the opinion in the *Wiley* case to suggest any disapproval of those cases by this Court.

Cases which have held that employees may not demand arbitration where the "Union" is given that right and no provision is made in the collective bargaining agreement for an employee to request or demand arbitration include: *Black-Clawson Co., Inc.* v. *International Ass'n of Mach.*, 313 F. 2d 179 (C. A. 2, 1962); *Ostrofsky* v. *United Steelworkers of America*, 171 F. Supp. 782 (D. Md. 1959), affirmed 273 F. 2d 614 (C. A. 4, 1960), cert. denied 363 U. S. 849; *Remak* v. *Electric Auto Lite Co.*, 49 LRRM 2570, 44 LC ¶17,340 (Pa. Com. Pleas, 1961); *Arsenault* v. *General Electric Co.*, 147 Conn. 130, 157 A. 2d 918 (1960), cert. denied 364 U. S. 815; *Calka* v. *Tobin Packing Co.*, 176 N. Y. S. 2d 910 (1958), affirmed 192 N. Y. S. 2d 886 (App. Div.

1959); *Donnelly* v. *United Fruit Co.*, 75 N. J. Super. 383, 183 A. 2d 415 (App. Div. 1962); *Bianculli* v. *Brooklyn Union Gas Co.*, 115 N. Y. S. 2d 715 (Misc. 1952); *United States* v. *Voges*, 124 F. Supp. 543 (E. D. N. Y. 1954); and *Finnegan* v. *Pennsylvania R. R. Co.*, 183 A. 2d 779 (N. J. Super. 1962) (holding that individual employees, discharged when plant was sold, had no right to invoke arbitration under collective bargaining agreement when the Union which alone could request arbitration chose not to do so).

Some of the policy reasons which preclude individual employees (singly or in concert) from circumventing the "Union" in the grievance arbitration procedure are stated in *Ostrofsky* v. *United Steelworkers of America*, 171 F. Supp. 782, 790-791 (D. Md. 1959), affirmed 273 F. 2d 614 (C. A. 4, 1960), cert. denied 363 U. S. 849, as follows:

> "A union's right to screen grievances and to press only those it concludes should be pressed is a valuable right, and on balance it benefits all employees. Professor Cox has pointed out that there are 'strong reasons for concluding that the bargaining representative ought to have power under a broad industrial agreement to control, whether by pressing grievances, invoking arbitration, or instituting legal proceedings.' 69 Harv. L. Rev. at 625. The pertinent reasons may be summarized as follows:
>
> "A prime function of a grievance procedure is to secure uniformity in interpreting the agreement and building up a 'law of the plant' with respect to matters not spelled out in the agreement. In grievances arising out of problems not foreseen at the time of contract negotiations, although the issue is nominally framed by the past, the important question is often what rule shall govern the parties' conduct in the future. The group may be affected by future implications of the ruling to an extent that far outweighs the individual's claim for damages. Vesting the Union with control of all grievances increases the likelihood of uniformity

and reduces 'a potential source of competitions and discriminations that could be destructive of the entire structure of labor relations in the plant.' It prevents dissident minorities from pressing real or imagined grievances in an effort to squeeze the last drop of competitive advantage out of each grievance. Allowing an individual to compel arbitration whenever he is dissatisfied with a company-union adjustment would discourage day-to-day cooperation between union and company in which grievances are treated as problems to be solved. Public officials and arbitrators, as well as employers, constantly remind union officials that they have a duty to discountenance disruptive and frivolous claims. If they are to accept this responsibility, union officials should be given the power to make their decisions effective.

"Professor Cox concludes that the untrammeled individual enforcement of collective bargaining agreements would hamper the growth of sound labor-management relations. The courts have supported this conclusion. 'The philosophy of the Union in retaining control over disputes and of the Company in requiring the same is sound. A contrary procedure which would allow each individual employee to overrule and supersede the governing body of the Union would create a condition of disorder and instability which would be disastrous to labor as well as to industry.' [Citations.]"

In *Black-Clawson Co., Inc.* v. *International Ass'n of Mach.*, 313 F. 2d 179 (C. A. 2, 1962), the court states (p. 186):

"Chaos would result if every disenchanted employee, every disturbed employee, and every employee who harbored a dislike for his employer, could harass both the union and the employer by processing grievances through the various steps of the grievance procedure and ultimately by bringing an action to compel arbitration in the face of clear contractual provisions intended to channel the enforcement remedy through the union."

## II.

The second argument advanced by petitioners is a supposed "conflict * * * between two forums having concurrent jurisdiction", a conflict which, as stated hereinabove, does not appear from the record. Respondent District 50 is not familiar with the proceedings before the National Labor Relations Board to which the petitioners allude, because District 50 was not a party to any such proceedings (and would not have been bound by any determination by the Board purporting to affect its interests, had such a determination been made). However, it appears from Exhibit A in the Appendix to the Petition for Rehearing which petitioners filed in the Court of Appeals that the only "determination" made by the Board was its Regional Director's refusal to issue a complaint against the Company charging a violation of Section 8 of the National Labor Relations Act. (Pet. for Rehearing, p. 8). The presumed violation was that the Company "refused to bargain with Local 12405 by denying it the right to have counsel of its own choosing present during negotiations between the Union and the Employer" (App. 257). Even if the NLRB had not refused to issue a complaint against the Company but had, instead, found that the Company's refusal to permit counsel of the local union's choosing to attend collective bargaining sessions was an unfair labor practice, such finding would not have been in conflict with the decision of the District Court and Court of Appeals that District 50 could not be by-passed in petitioners' attempt to demand arbitration. Not even the petitioners go so far as to claim that the NLRB held that District 50 was not a necessary party to any demand for arbitration.

## III.

This Court will grant review on a writ of certiorari "only when there are special and important reasons therefor" [Rule 19 (1) of the Rules of this Court]. Petitioners have failed to show any such reasons for granting the writ. The decision of the Court of Appeals is not in conflict with any other Federal court decision to which the Court has been referred, nor does the decision involve a Federal question "which has not been, but should be, settled by this court". The Court of Appeals merely decided a simple question of substantive contract law regarding the identity of the "Union" party to the collective bargaining contract without whose request and participation a grievance could not be referred to arbitration.

## CONCLUSION.

We submit that the reasons advanced in the petition for granting the writ are without substance. The writ of certiorari should, therefore, be refused.

Respectfully submitted,

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# Supreme Court of the United States

NO. 354

PETITIONERS REPLY BRIEF

CHAMPLIN BRIEF COMPANY, CHICAGO

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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1964.

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**NO. 334**

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LOCAL UNION NO. 12405, DISTRICT 50, UNITED MINE WORKERS; JOSEPH J. PIUNTI, *et al.*,

*Petitioners,*

*vs.*

MARTIN MARIETTA CORPORATION; DISTRICT 50, UNITED MINE WORKERS OF AMERICA,

*Respondents.*

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On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.

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## PETITIONERS' REPLY BRIEF

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Petitioners seek certiorari not only because of the plight of the particular participants involved herein but because the situation with respect to arbitration in the Seventh Circuit requires the supervision of this Court. On June 30, 1964, in *Piano and Musical Instrument Workers, Local 2549 v. W. W. Kimball Company*, 333 F. 2d 761 (1964), *cert.*

*applied for*, App. Docket No. 535, October term, 1964, the Seventh Circuit held that the question of reemployment rights of employees under a collective bargaining agreement was not arbitrable where the Company transferred the location of its plant during the term of the agreement but did not resume actual production with new employees until nine days after the contract's expiration. The only variance between the instant case and *Kimball* is that while *Kimball* waited until nine days following the expiration of the agreement to open its new doors, here everything occurred during the term of the contract—a contract which provided that work be performed only by employees in the bargaining unit. In both cases the Seventh Circuit, contrary to the dictates of *Steelworkers* v. *American Manufacturing Company*, 363 U. S. 564, 568 (1960), resolved the merits of the grievance and interposed its judgment as to the equities of the dispute. The district court held in the instant matter that although Respondent Company transferred its operation to its other plants during the term of the agreement it "did not breach the Wage Agreement . . ." (App. 254). And this the Court of Appeals affirmed along with the district court's finding that the "subject matter of the grievance . . . was not covered by any of the terms of the Wage Agreement" (App. 254). Yet, the collective bargaining agreement provided that any "differences" or "any local trouble of any kind" as to the "meaning and application" of the contract would be resolved in arbitration. And this same agreement contained extensive provisions concerning seniority, provided for the maintenance of the *status quo* during the term of the agreement in the event of any differences and required that work be performed only by employees in the bargaining unit.

Clearly, within the dictates of *John Wiley & Sons, Inc.* v. *Livingston*, 376 U. S. 543 (1964) the subject matter of the

dispute is arbitrable. Both Respondents (a Company and an International Union) resist such determination, contending that the International Union was an indispensable party to requesting arbitration and its failure to request same (indeed, its adamant refusal) defeats the Local Union's claim for arbitration, despite the fact that the only act which can be attributed to the International Union is that it, in addition to the Local Union, signed the agreement, but then only "on behalf of" the Local Union. The Court of Appeals, in addition to resolving the merits, held that the Local Union did not follow the grievance procedure in that the International Union did not join in the final steps of same. Respondents would argue that the variance here is one of substance instead of procedure and hence a court rather than an arbitrator should make the initial determination. Admittedly, as this Court pointed out in *Wiley*, there are areas which cannot be fitted into either a substantive or a procedural cubbyhole. We believe, however, that the issue here is one of pure procedure. After all, the Local Union administered the contract, selected its own grievance committee, and the International's role in the administration of the contract was purely advisory—if that. An analysis of the record reflects complete compliance with the procedural steps insofar as the Local Union was concerned, and it would seem that since the subject matter of the grievance is clearly arbitrable, the matter is appropriately left for an arbitrator to resolve along with all of the facets of the case, perhaps paying particular attention to the question of why the International Union adamantly resisted and resists arbitration when the plant is no longer in existence and there is no continuing bargaining relationship—all that remains to be determined is the rights of the employees under the now expired contract.

In support of their position that the matter is not procedural the Company cites and quotes from *Atkinson* v. *Sinclair Refining Company*, 370 U. S. 238, 241 (1962) (Co. Brief, pages 7-8). From the context of the quote, however, and from the Court's reference immediately following to *United Steelworkers* v. *Warrior & Gulf Nav. Co.*, 363 U. S. 574, 582 (1960) it is apparent that this Court, in stating that it was the Court's function to determine whether a company was bound to arbitrate, was referring to determining whether the subject matter was arbitrable. Thus in *Atkinson* this Court determined that the collective bargaining agreement did not encompass the arbitration of an employer's damage claim for breach of a collective bargaining agreement. In the instant case, however, neither Respondent contends that the subject matter is outside the coverage of the arbitration clause. The parties' only dispute is whether all of the steps of the grievance procedure have been adequately followed.

But even assuming *in arguendo* that the issue here is a substantive one, the Court below nevertheless refused to heed the admonishment of *Warrior and Gulf* that every presumption is to be taken in favor of arbitrability. Here District 50 entered into the agreement "*on behalf of* Local Union No. 12405 (hereinafter referred to as the 'Union')" (App. 14) (Italics supplied). The Local, a signatory to the agreement (App. 33), administered the agreement by itself, with rare occasional advice from District 50. Contract demands were formulated by the Local and it directed the negotiations with the Company. Moreover, it was the membership of the Local which ultimately voted to accept or reject the Company's contract proposals. Clearly, at best, District 50 was an agent of the Local. At a minimum, under the guidelines of *Warrior and Gulf* and its successors,

as a signatory to the agreement, the Local could refer a grievance to arbitration.

The Company and District 50, rather than meet the issues presented by the Petitioners, have seen fit to attempt to camouflage the very clear facts of this case, to be inaccurate and to attempt to mislead. First, with respect to Petitioners' contention that a conflict exists between the Court of Appeals' determination that "District 50 was the sole collective bargaining agent" and the National Labor Relations Board's determination that the Local was also a party to the agreement, the Company unqualifiedly asserts, "No finding was made by the Board, or *by any Board agent*, that the Local was a party to the 1961 contract. . . ." (Italics added). This statement is untrue, and well below the dignity required of an officer of this court. Unsworn, it directly contradicts an affidavit of one of Petitioners' counsel presented to the district court in support of a motion for a new trial (App. 256-257). Petitioners were informed by a Regional agent of the National Labor Relations Board that the General Counsel's office in Washington had determined that the Local is a party to the collective bargaining agreement and that the Board was prepared to issue a refusal to bargain complaint against Respondent Company (App. 256-257). Furthermore, Respondent Company is aware of this because the only reason complaint did not issue is that the Company informally agreed, at the request or suggestion of the Regional Director of the National Labor Relations Board, to write the Local offering also to bargain with it. A copy of said letter appears herein as Appendix A. And that is the reason the Regional Director stated in his letter refusing to issue complaint, "Investigation of this matter reveals that the Company has unconditionally offered to meet and bargain, upon request, with representatives of District 50 . . . and its Local Union No. 12405. . . ." As for

the letter from the appeals office of the General Counsel, quoted at page 6 of the Company's brief in opposition, that letter did no more than sustain the Regional Director's informal disposition of the Board proceedings. Clearly, the letter was not intended to express approval of the Court of Appeals decision but was merely a recognition that there was no practical point (particularly in view of the Regional Director's informal disposition) in proceeding further in the limited 8 (a)(5) area, since any possibility of enforcement of a contrary Board order in the Seventh Circuit would be highly unlikely.

As for Respondents' contention that *Wiley* is inapplicable because "*Wiley* involved a merger wherein all predecessor obligations were assumed by the surviving entity" (Company Brief, page 7), clearly there is no merit. Here the Company to which the operations were transferred is neither a predecessor nor successor—it is the same company. On the basis of *Wiley*, *a fortiori* the instant matter is arbitrable. Nor is there any merit to the Company's contention that the failure to join the other two unions at the new plants is an obstacle to arbitration. First, an arbitrator may well see fit to award only monetary compensation and there would thus be no need to involve any other unions or anyone else. Secondly, in *Carey* v. *Westinghouse Electric Corporation* 375 U. S. 261 (1964), this Court held that the failure of both unions involved to join in a grievance protesting an employer's work assignment did not bar a court's direction of arbitration of the grievance because "the arbitration may as a practical matter end the controversy or put into movement forces that will resolve it."

District 50 in its brief attempts to categorize the instant matter as a dispute between individual employees and their collective bargaining agent as to whether or not to refer a particular grievance to arbitration. Such is not the case.

We do not even reach the question of whether individual employees may refer a grievance to arbitration. Here the Local Union itself—a party signatory to the collective bargaining agreement—referred the matter to arbitration. All of the individual employees affected joined in the grievance and in the referral to arbitration. Now District 50 contends that the reference was improper because of certain policy considerations. For example, it contends, "A prime function of a grievance procedure is to secure uniformity in interpreting the agreement and building up a 'law of the plant'" . . . (page 8). Also, "In grievances arising out of problems not foreseen at the time of contract negotiations, although the issue is nominally framed by the past, the important question is often what rule shall govern the parties' conduct in the future." (Page 8). Or, "The group may be affected by future implications of the ruling to an extent that far outweighs the individual's claim for damages. . . ." (page 8). And so on with self righteous platitudes that may have some cogency in a continuing bargaining relationship where an individual seeks something that the group may or should oppose. But what place have such considerations here where the plant has been closed, where no one now contends that it should be reopened, and where the Local Union itself—and not individual employees—has referred the matter to arbitration, with the unanimous approval of all of the employees affected?

One can only wonder at District 50's motives. Not only has it actively resisted the Local and its members at all stages of these proceedings, but even now, before this high court, without any basis, it accuses the Local of inaccuracies and misrepresentations when, in reality, it and not the Local is guilty of these improprieties. Thus it charges Petitioners with "tak(ing) unwarranted liberties with the record." (District 50 brief, p. 2). Its first example, however, reveals

the inaccuracy of its statement and sets the tone for the remainder of its brief. It takes a partial quotation from page 6 of the Petition and erroneously asserts that the appendix citations not only do not support the quotation but negate it. If District 50 had been more discerning it would have noted that the record citations were intended to and do support that part of the quotation which District 50 omitted from its brief. The full quotation is as follows:

> "It (the Company) kept, however, from the Local the fact that a substantial portion of the operations was being transferred to the Company's other plants (App. 84, 87, 89-90)."

All of the pages cited support the assertion that the Company *kept from the Local* the fact that it was transferring a part of its operations. But, there is a deeper significance here. These slanderous and uncalled for remarks intended to injure the Local before this tribunal reveal the true nature of the opponent the Local is facing and the impurity of its motives. For if Respondent District 50 were interested either in the truth or in serving its members, candor would require that it cite to this Court the actual appendix citations which confirm what even Respondent Company does not deny, namely, that a substantial portion of the Company's operations were transferred to two of its other plants. Thus on pages 152-153 of the Appendix appears the following stipulation entered into at the trial between the Company and Petitioners:

> "Now, I propose also that the company transferred the following pieces of machinery and equipment which had been in operation in its Chicago Heights plant to its plants at either Jackson, Michigan, or St. Louis, Missouri:
>
> "And as I read each item of equipment, I will read the particular city to which transferred.

"A 4-inch Bonnot extruder and the winder. This was first transferred to Jackson, Michigan and, then re-transferred to St. Louis, Missouri; a lab mixer transferred to the St. Louis plant; a pug mixer transferred to the St. Louis plant; a Clark fork truck transferred to the St. Louis plant; a heavy-duty Baker-Perkins mixer transferred to the Jackson, Michigan plant; a Ford cold slam jog transferred to Jackson, Michigan; an Oven Precision Scientific transferred to Jackson, Michigan; a greaseworker, a piece of equipment transferred to Jackson, Michigan; a Shore Durometer transferred to Jackson; a deep freeze minus 20 degrees Fahrenheit transferred to Jackson; a portable screener and an accumulator transferred to Jackson; another 4-inch Bonnot extruder—this is in addition to the one earlier read—transferred to Jackson; another winder transferred to Jackson; miscellaneous factory supplies also transferred to Jackson.

"Then there was lab supplies and office equipment transferred to St. Louis. ...

"A curb and gutter slitter transferred to St. Louis, Missouri; a punch press and table transferred to St. Louis; slitters transferred to St. Louis, and equipment for production of the old 336 Department, which has now been renumbered 237.1 Department, which included a mixer and two blenders. This went to St. Louis.

"A Penetrometer went to St. Louis; a 77 degree water bath and scale went to St. Louis. And then, there additionally are miscellaneous factory supplies listed which mean another shipment to St. Louis; a Hyster, which is a fork truck, went to Jackson, Michigan; a Clark truck went to Jackson, Michigan; and all of the items in the Center Strip Department went to St. Louis just last Friday, on December 21st.

"And they included a slitter, a punch press, a forming press, dies, and related items.

"That concludes the proposed stipulation.

—

"Mr. O'Shaughnessy: Your Honor, I have agreed, for purposes of expediting the hearing to these facts."

Nor is District 50 any more accurate in its statement at page 3 of its brief that "Petitioners misrepresent the record in stating on (p. 7) that the 'grievance' complained 'about the Company's . . . transferring operations.'" Although the grievance (App. 35-37) does not mention the word "transfer" it does speak of "terminat(ion) of operations" and "the right of relocation" and the payment of "relocation expenses". Obviously, if the grievance referred to permanent cessation rather than mere transfer, there would be no reason to request relocation.

In sum, no one contends that the subject matter of the instant dispute is outside the coverage of the arbitration clause. The sole point in issue is whether all of the steps of the grievance procedure were properly followed—a type of dispute which Wiley has defined as procedural and to be determined by an arbitrator and not by a court. But even if such a dispute were to be considered substantive, under the guidelines of *Warrior and Gulf* and later cases, the dispute is clearly arbitrable.

We are not unaware of the Court's case load. While perhaps an over-simplification—the growth of our country as regards some facets of our lives has probably created a dichotomy with other facets which have been more resistant to change. Judicially, this has resulted in a substantial case load of matters important to our society and culture. The issues presented here fall into this generic category, but we are not presumptuous enough to suggest that they are important to the country as a whole. *Wiley* will carry the country for a long time—but not the entire country, for the Seventh Circuit has been isolated. And this isolation has been made clear when one views the instant matter and the

*Kimball* case (June 30, 1964) *cert. applied for*, App. Docket No. 535, October, 1964. Without a clear expression from this Court, situations will be rationalized and articulated in terms of tenuous theories to defeat the protections afforded employees under a collective bargaining agreement when an employer sees fit to transfer his plant and ignore the seniority rights of his former employees. Here, the Seventh Circuit seized upon the shameful alliance District 50 made with the Respondent Company. But, this alliance does not form the basis of the result. It was but a convenient detail utilized to defeat arbitration. We suggest that any detail would have been sufficient. Right or wrong the Seventh Circuit refused emotionally to embrace, let alone logically follow, the concept that a collective bargaining agreement may generate valuable rights for employees which a company must honor at least by resolving differences in arbitration. In this frame, then, this case is important. Territorially, it is important to those within the confines of the Seventh Circuit. We need this Court's assistance.

Respectfully submitted,

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327 South La Salle Street,
Chicago, Illinois 60604,
HArrison 7-7630.

*Attorney for Petitioners.*

Chicago, Illinois,
October 12, 1964.

## APPENDIX A.

MARTIN MARIETTA CORPORATION
101 East Ontario Street
Chicago 11, Illinois

March 11, 1963

Mr. Joseph Piunti
125 Rose Street, Box 35
Glenwood, Illinois

SUBJECT: MARTIN MARIETTA CORPORATION
CASE NO. 13-CA-5284

Dear Mr. Piunti:

In response to your letter of March 8, 1963 to our attorneys, I wish to assure you that Martin Marietta will meet and bargain, upon request, with the representatives designated by District 50, United Mine Workers of America, and by its Local Union No. 12405, whoever they may be, including Mr. Mamet.

Kindly arrange a suitable time and place.

Very truly yours,

MARTIN MARIETTA CORPORATION

(s) Warren A. Furst

Warren A. Furst
Director of Personnel
and Industrial Relations
Construction Materials Division.

WAF-GH

cc: Ross M. Madden
National Labor Relations Board — Chicago

Bernard Mamet
427 S. LaSalle Street (sic) — Chicago

Harold J. Bowers
District 50, UMWA — Chicago

Herbert C. Loth, Jr.
135 S. LaSalle Street — Chicago

J. B. O'Shaughnessy
231 S. LaSalle Street — Chicago

C. E. Cosby
Presstite Division — St. Louis